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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL PAUL GOMEZ,

Defendant and Appellant.

E063888

(Super.Ct.Nos. RIF10003113 &  
SWF1202002)

OPINION

APPEAL from the Superior Court of Riverside County. Judith C. Clark, Judge.

Affirmed.

Susan L. Ferguson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton, and Heidi Salerno, Deputy Attorneys General, for Plaintiff and Respondent.

# I

## INTRODUCTION<sup>1</sup>

After defendant Manuel Paul Gomez assaulted his wife and threatened her with a gun, he boasted about his conduct in a recorded phone conversation. Defendant pleaded guilty to assault with a firearm and admitted a firearm enhancement and a strike prior.<sup>2</sup> Before sentencing, defendant moved to withdraw his plea but the court denied the motion. The court sentenced defendant to a prison term of 10 years.

Defendant contends that the court interfered with the plea negotiations by warning him he could face severe punishment if the audio recording was admitted at trial and the jury convicted him. Defendant also contends that the court mistakenly thought he had a prior firearm conviction and defendant incorrectly believed that his bail bond expired that day. Defendant asserts the combined errors justified withdrawal of his plea.

We hold defendant failed to show that the trial court overcame his will and coerced him into pleading guilty. The court's explanation to defendant of what he risked by going to trial was not coercive. We affirm the judgment.

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<sup>1</sup> All statutory references are to the Penal Code unless stated otherwise.

<sup>2</sup> Defendant was charged with assault with a semiautomatic firearm (count 1, § 245, subd. (b)); dissuading a witness by force or threat. (count 2, § 136.1); corporal injury on a spouse (count 3, § 273.5); and assault with a deadly weapon (count 4, § 245, subd. (a)(1).) Other allegations involved personal use of a firearm (§§ 1192.7, subd. (c)(8), 12022.5, subd. (a)), and a first degree burglary (§ 459); a serious prior offense (§ 667, subd. (a)) and a special prior offense. (§§ 667, subds. (c) and (e)(1), and 1170.12, subd. (c)(1).)

## II

### BACKGROUND<sup>3</sup>

On December 19, 2012, defendant became enraged at his wife, yelling at her and calling her a “stupid bitch.” He examined her cell phone, accused her of cheating on him, and called her a “whore.” Defendant dragged her by her hair from room to room, stopping to assault her. In the master bedroom, she tried to escape out the bathroom window but he pulled her back in by her hair. Defendant struck her face and body, and choked and kicked her.

Defendant forced his wife into a dog kennel and whipped her back and legs with a metal-pronged dog collar and leash. Defendant grabbed a handgun, cocked it, and told her to open her mouth or he would knock out her teeth. When she opened her mouth, he inserted the gun. He told her he would kill her if she called the police.

Defendant next ordered his wife to clean the house. She went into the garage, using the opportunity to jump the fence and run down the street to her sister’s house. Defendant came to the sister’s front door and warned his wife she needed to come back to finish cleaning the house. When they refused to answer the door, defendant left.

As a result of the beating, the victim’s head, face, arms, legs, and ankles were covered with bruises. Her lips were purple, and she could not open her jaw or eat.

Defendant used his wife’s cell phone, which had a recording application, to call his brother. During the conversation, defendant admitted to grabbing the victim’s hair,

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<sup>3</sup> The facts about the incident are derived from the preliminary hearing.

dragging her through a window, locking her in the dog's kennel and beating her. He bragged that he spit in her face, slapped her and threatened to shave her head: "I went nuts dude. Dude, I just let the dark side take over me dude, completely. . . . [¶] I already told her dude, you blow the whistle, I'm bailing out; I'm fuckin' killing you man. . . . [¶] I'll kill her dude. I'll kill that bitch. [¶] God damned fuckin' psycho dude. I fuckin' turned into a fuckin' God damn psychopath tonight dude. [¶] Yeah, fuckin' wiggled out. Yeah, I fuckin' beat the shit out of [her]. I fucked her ass up. Basically, I went through her phone. Fuckin' went through her shit. And I fuckin' lost it. . . . There's something wrong with me dude. . . . [¶] I ended up whop-whoppin' [her] ass instead. I whipped her ass with a belt . . . ."

On March 5, 2015, defendant pleaded guilty to assault with a firearm. He admitted a firearm enhancement and a prior strike. In May 2015, defendant moved to withdraw his plea. After a hearing, the trial court denied the motion. The court sentenced defendant to 10 years in state prison pursuant to the plea agreement.

### III

#### DISCUSSION

Defendant contends that the trial court interfered in the plea negotiations by warning him he was in a "world of hurt" and faced a possible sentence of 30 years. Defendant also contends the court mistakenly thought he had a firearm prior and defendant incorrectly believed that his bond expired that day. Defendant argues the trial court abused its discretion in denying his motion to withdraw his plea.

We hold the trial court did not abuse its discretion in finding that defendant understood and agreed to the plea. Instead, the trial court properly found the plea was not the result of coercion or duress but rather was a product of defendant's free will.

*A. Proceedings Below*

After five defense continuances, the parties appeared for a readiness conference before the calendar department on March 5, 2015, with trial set for March 9. Defendant asked for another continuance because the prosecution had recently turned over the audio recording and defendant and his attorney disagreed about how to defend the case. Defendant wanted a new attorney who would not be available for another week.

At defense counsel's request, the court addressed defendant at some length, warning him about the danger posed by the audio recording: ". . . if that recording comes in, there is just a reality here you are in a world of hurt, a world of hurt." The court further cautioned defendant that he was facing serious charges and substantial prison time of 30 years because of the gun allegation and prior strike. The court commented that defendant would need to testify to defeat the gun allegation and "the jury is going to know about your prior convictions . . . [and] violation of probation on a drug charge in which you were armed."<sup>4</sup> The court also warned defendant that a more lenient possible sentence of 14 to 18 years might not be available once trial began. The court advised defendant to consider that he would soon have a newborn child with whom he would not be able to have a relationship if he was imprisoned for decades. For all these reasons, the

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<sup>4</sup> As discussed below, the court's misunderstanding about defendant being armed on a prior drug charge was corrected.

court urged defendant to consider entering a plea. Later in the day, defendant changed his plea to guilty.

Subsequently, in May 2015, defendant moved to withdraw his plea, claiming that he had been panicked because counsel had told him his bond had expired, and he would miss his daughter's birth unless he pleaded guilty. He also claimed that the trial court had denied his request for a new attorney and that his attorney was not ready for trial, given the new audio evidence.

At the hearing on defendant's motion to withdraw, Ann Cunningham, the defense attorney who had represented him during the plea, explained that, after she received the audio recording, defendant asked her about hiring a new attorney. Cunningham asked the calendar judge to talk to defendant because of how much time he faced if found guilty. She and defendant agreed to propose a plea offer of 10 years. Defendant told her she could make the offer and it was in "God's hands." The prosecutor accepted the offer. Cunningham believed the plea was a good deal for defendant whose potential exposure was between 30 and 50 years. Cunningham testified defendant never told her that he felt pressure or duress from the court.

Regarding the bond, Cunningham recalled there was a bond issue but there was also a "*Cruz* waiver" so defendant was not going to be taken into custody even if he did not agree to a plea. No one told defendant that he would be placed in custody and Cunningham did not anticipate any difficulty with defendant being able to attend the birth of his child. Cunningham remembered defendant calling the bail bondsman for

information during the plea negotiations. If defendant did not accept a plea, he would have remained out of custody until trial the following week.

At the hearing on the motion, the trial court found that defendant's bond was still in effect on March 5. The trial court found the case was extremely old and the defense had requested many continuances. Defendant had not retained the new attorney and the new attorney was not in court. If defendant later retained an attorney and the attorney appeared, the calendar department would have considered his request to continue the trial.

Defendant claimed he was prejudiced by the court's mistaken belief that he had a prior firearm conviction. Cunningham testified that the court was wrong about the firearm prior but that the parties had cleared up the confusion immediately. Although defendant had been charged with a prior firearm, he did not plead to the prior firearm allegation. Defendant knew there was a correction and the court was aware he did not have a firearm prior.

The trial court found it was clear the calendar court was not ruling on the admissibility of the audio recording when it counseled defendant. The trial court found that defense counsel had requested that the calendar court mediate a plea resolution, discussing the risks of going to trial and the advantages of extending an offer to the prosecution. Defendant signed the plea agreement indicating that he read and understood it and that no one made any threats or pressured him to plead guilty. The trial court found that the calendar court gave an accurate and realistic recitation of the prison exposure and did nothing to coerce defendant. The trial court denied the withdrawal

motion, holding that defendant failed to prove by clear and convincing evidence that his plea was the result of coercion or duress and not the product of his free will.

*B. Motion to Withdraw Plea*

The parties generally agree on the applicable law. Section 1018 provides in pertinent part: “On application of the defendant at any time before judgment . . . the court may, . . . permit the plea of guilty to be withdrawn and a plea of not guilty substituted.” A defendant’s motion to withdraw his plea must be based on good cause: “To establish good cause, it must be shown that defendant was operating under mistake, ignorance, or any other factor overcoming the exercise of his free judgment. [Citations.] Other factors overcoming [a] defendant’s free judgment include inadvertence, fraud or duress. [Citations.]” (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1207-1208.) A plea may not be withdrawn simply because the defendant has changed his or her mind (*People v. Nance* (1991) 1 Cal.App.4th 1453, 1456), or because the plea was made reluctantly or unwillingly by the defendant. (*Huricks*, at pp. 1208-1209; see *People v. Hunt* (1985) 174 Cal.App.3d 95, 103-104; *People v. Urfer* (1979) 94 Cal.App.3d 887, 892-893.)

A guilty plea is not considered involuntary because the defendant was persuaded to plead reluctantly. (*People v. Revaux* (2006) 142 Cal.App.4th 914, 919.) A defendant must demonstrate he was pressured into the plea by more than the pressure experienced by “every other defendant faced with serious felony charges and the offer of a plea bargain.” (*People v. Huricks, supra*, 32 Cal.App.4th at p. 1208.) Defendant’s burden is to show by clear and convincing evidence the ends of justice would be served by



permitting a change of plea to not guilty. (*People v. Shaw* (1998) 64 Cal.App.4th 492, 496; *People v. Nocelotl* (2012) 211 Cal.App.4th 1091, 1096.) The court is not bound to credit fully defendant's statements in support of a motion to withdraw, even if uncontradicted, in view of the defendant's obvious interest in the outcome of the proceedings. (*People v. Hunt, supra*, 174 Cal.App.3d at p. 103.)

The trial court exercises its discretion in granting or denying an application to withdraw a plea "after consideration of all factors necessary to bring about a just result. [Citations.] On appeal, the trial court's decision will be upheld unless there is a clear showing of abuse of discretion. [Citations.]" [Citation.] 'Guilty pleas resulting from a bargain should not be set aside lightly and finality of proceedings should be encouraged.' [Citation.]" (*People v. Weaver* (2004) 118 Cal.App.4th 131, 146.)

As the facts establish, the calendar court explained to defendant the risks he faced by going to trial. Although the calendar court mistakenly stated that defendant had a firearm prior, the parties corrected the misunderstanding. The court further stated that it would consider a continuance if defendant hired a new attorney, and made no representations about the status of defendant's bail bond. None of that was coercive. Defendant orally acknowledged he understood the nature and consequences of the plea and he entered into the plea without any threat. His attorney joined in the waivers and concurred in the plea and testified the plea was in defendant's best interest.

Defendant argues the court pressured him like it did the defendant in the *Weaver* case, where the appellate court found the trial court "went too far" in its plea discussion with the defendant. (*People v. Weaver, supra*, 118 Cal.App.4th at p. 149.) However,

*Weaver* is distinguishable. In *Weaver*, the defendant pleaded guilty to multiple counts of child molestation. The trial court made repeated and prolonged efforts to induce a plea. The trial court indicated it would admit evidence that would cause defendant to be convicted. The trial court concluded that the crimes were the result of a “particular and dangerous mental disorder” and that defendant was a “pedophile.” The court also exhorted defendant that the young female victims should not be victimized again and forced to testify. The *Weaver* court found that the trial court’s conduct was highly inappropriate and defendant was justified in his concern he would not get a fair trial. The *Weaver* court explained that judges can play a useful part in plea negotiations: “However, when the trial court abandons its judicial role and thrusts itself to the center of the negotiation process and makes repeated comments that suggest a less-than-neutral attitude about the case or the defendant, then great pressure exists for the defendant to accede to the court’s wishes.” (*Id.* at pp. 149-150.)

Unlike in *Weaver*, the master calendar judge here made clear to defendant that she would not preside over his trial or rule on the admissibility of the audio recording. The judge did not express an opinion about defendant’s guilt. Instead, the judge explained the potential prison exposure without exaggeration and the benefits of a plea. (See *People v. Ray* (1996) 13 Cal.4th 313, 339-341.)

The combined circumstances did not result in a coerced plea, similar to *People v. Sandoval* (2006) 140 Cal.App.4th 111, 126. *Sandoval* involved multiple related pleas by fellow gang member codefendants. One of the codefendants threatened Sandoval’s life if he did not take the plea. The *Sandoval* court found that the trial court’s sympathetic

remarks to the codefendants stating that Sandoval's refusal was thwarting them from taking the plea, and that he was taking them "down with him," increased the pressure on Sandoval. Those remarks; the short deadline to accept the plea; and the court telling Sandoval there was more than sufficient evidence to convict him, all contributed to the coercion. (*Id.* at p. 127.)

Here, no combination of factors rendered defendant's plea coerced. The court's misunderstanding about a prior gun strike was corrected. Defendant's confusion about his bond was not the court or his attorney's fault. (*People v. Nocelotl, supra*, 211 Cal.App.4th at p. 1096.) Based on the evidence, the court rationally concluded that defendant was not under duress when he pleaded guilty. The trial court did not abuse its discretion in finding that good cause to withdraw defendant's plea was not shown here.

#### IV

#### DISPOSITION

The trial court did not abuse its discretion in denying defendant's motion to withdraw his guilty plea. We affirm the judgment.

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CODRINGTON

J.

We concur:

RAMIREZ

P. J.

MILLER

J.